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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ARMEN MANGASARYAN et al., Defendants and Appellants.	B229867 (Los Angeles County Super. Ct. No. GA076057)

APPEALS from judgments of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed.

Vincent James Oliver for Defendant and Appellant Armen Mangasaryan.

Shouse Law Group and Al F. Amer for Defendant and Appellant Arpiar Terrgalstanyan.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Armen Mangasaryan and Arpiar Terrgalstanyan appeal from the judgments entered following their convictions by a jury of the murder of Hasmik Voskanyan. Both defendants challenge the admission of cell phone records linking them to the location of the murder, as well as recordings of various telephone conversations and police interviews, and the sufficiency of the evidence supporting their convictions. Terrgalstanyan also contends the trial court erred in admitting evidence of guns found in the trunk of his car and in failing to give the jury an accomplice instruction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Voskanyan's Murder*

Late in the evening of February 24, 2009 Voskanyan and her boyfriend, Agasi Simonyan, were watching television in an upstairs room of their home in southwest Burbank. Simonyan, who had a history of heroin abuse and was recuperating from surgery, had taken 40 milligrams of methadone and 25 milligrams of Xanax, smoked some marijuana and was dozing on the couch. About 12:15 a.m. Voskanyan woke Simonyan and told him someone was knocking on their front door. Looking out the second-floor window overlooking their driveway, Voskanyan said, "It's Sam," a friend who drove a black BMW sedan. Voskanyan went downstairs to open the door, and Simonyan heard her unlock the deadbolt. A few seconds later, he heard a single gunshot.

Simonyan called out to Voskanyan, but she did not answer. He went to the window and saw a black Mercedes CLS sedan with tinted windows and shiny wheels. Simonyan recognized the car as one he had seen previously at their house driven by an acquaintance whose father had previously done business with Voskanyan. Simonyan also saw a man of small stature wearing a white sweater and dress pants and shoes running toward the front passenger door of the Mercedes. Although he could not see the man's face, Simonyan recognized him as Mangasaryan, whom he had known for some years and who had visited his home in the company of a former friend of Voskanyan's, Bella Stepanyan. As the car drove away, Simonyan heard a screeching sound as if the tires had spun on the street. He ran downstairs where he found Voskanyan lying in the doorway with a gunshot wound to her face. Simonyan called the police.

2. *The Arrests and Charges*

Burbank Police Officer Gilberto Moreno was on patrol on Pass Avenue when he heard a gunshot. He had turned west looking for its source when the dispatcher broadcast that a shooting had occurred on Jacaranda Avenue. Moreno saw no vehicles as he approached the house. When he arrived, Moreno found Voskanyan lying face down in a pool of blood. Simonyan told Moreno he did not know what had happened. Police recovered a Smith & Wesson .40-caliber shell casing manufactured by Speer outside the front door and a tire mark adjacent to the curb in front of the house.

Simonyan was interviewed extensively through the early morning at the Burbank Police Station. He at first denied knowing anything about the crime. At Simonyan's request, an Armenian-speaking Burbank Police officer, Steve Karagiosian, accompanied him outside to smoke. Speaking in Armenian, Simonyan indicated he knew more than he had said but wanted to "handle this the Armenian way," meaning without police involvement. He also admitted he was afraid to say what he thought because, "in the Armenian culture," "[w]e don't rat on anybody."

At Karagiosian's urging, Simonyan revealed his belief Voskanyan had been murdered because of a dispute with Mangasaryan, Mangasaryan's brother Artur and Artur's girlfriend, Stepanyan. Although he knew Mangasaryan, Simonyan was better acquainted with Artur, whom he had known for five or six years. In the months preceding the murder Artur had been incarcerated on an immigration hold in Orange County. Stepanyan and Voskanyan had once been close friends but had argued after Voskanyan borrowed approximately $5,000 from Stepanyan to pay for her father's funeral and had been unable to repay the debt. Simonyan was aware that Stepanyan and Voskanyan had quarreled during a telephone conversation in January and that Artur had become involved in the dispute. Mangasaryan, Stepanyan and the man Simonyan knew as "Juto" or "Judo" had previously visited Voskanyan about the debt but stopped coming following the quarrel. Simonyan believed Artur had ordered Voskanyan's murder after the quarrel rendered the dispute deeply personal.

Simonyan was then shown photographic lineups ("six-packs") in which he identified Artur as the person who had ordered the murder, Stepanyan as Artur's girlfriend with whom Voskanyan had quarreled and Mangasaryan as the shooter.[1] Simonyan also recalled Terrgalstanyan's name and identified his photograph as the person who on several occasions had driven the Mercedes CLS to Simonyan's home when Mangasaryan and Stepanyan had attempted to collect money from Voskanyan.

Stepanyan was arrested around noon on February 25, 2009. She claimed she did not know Voskanyan had been murdered but admitted Voskanyan had borrowed $5,000 in December 2008 to pay for her father's funeral and another $3,000 several weeks later. Although Voskanyan had promised to repay Stepanyan within weeks, she had failed to do so; consequently, Stepanyan had been unable to repay her own debts.

Mangasaryan was arrested later that afternoon. In a recorded interview with Burbank police, Mangasaryan claimed he had been at a friend's apartment the previous evening until approximately 1 a.m. when he called a taxi to drive him home because he had been drinking. He initially denied leaving the friend's apartment at any time during the evening but then admitted leaving for a period of about five minutes to make a phone call. Told by Officer Karagiosian his cell phone had registered at a tower at the other side of town from the friend's apartment, Mangasaryan answered, "I have no idea. I'm telling you bro', I don't know what's going on. I truly don't know what's going on."

Terrgalstanyan, whose nickname is "Rodo," was arrested late in the evening of February 25, 2009. Undercover Burbank police officers observed a Mercedes CLS leaving Terrgalstanyan's Glendale address and followed it. When the Mercedes pulled over, the officers arrested Terrgalstanyan and his passenger. A number of firearms, including assault weapons and four handguns of different calibers, were recovered from the trunk of the Mercedes. Although none of the handguns found in the car fired the shot that killed Voskanyan, one was a Desert Eagle .40 caliber, semiautomatic weapon loaded

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[1] In an excerpt of the recorded interview played for the jury, Simonyan stated he was "99%" sure Mangasaryan was the shooter: "[Y]ou can't make a mistake if you see [a] person like 50 times in your life."

with Speer-manufactured .40 caliber Smith & Wesson hollowpoint bullets—the same kind of bullet used in the murder. A fingerprint lifted from the magazine belonged to Terrgalstanyan.

Police recorded statements made by Terrgalstanyan in the police car after his arrest and during interviews at the station. In the backseat of the car, Terrgalstanyan told his companion he was "easily going for 45." He also used the Armenian word, "Hasmik," which was Voskanyan's first name, but later claimed he was using the word, "Harsnik," which means wedding. Terrgalstanyan also appeared to anticipate the caliber of gun used in the murder when he volunteered the name "Desert Eagle" to Officer Karagiosian after the officer told him one of the guns was the same caliber as the murder weapon. In response to questioning Terrgalstanyan insisted he had been at his girlfriend's house in Glendale on the night of the murder, even after he was told his cell phone had been detected in Burbank.

Mangasaryan, Terrgalstanyan and Stepanyan were each charged with one count of murder (Pen. Code, § 187, subd. (a)),[2] with the special circumstance defendants had committed the murder by means of lying in wait (§ 190.2, subd. (a)(15)). It was further alleged against all defendants a principal had been armed with a firearm (§ 12022, subd. (a)(1)) and that Mangasaryan had personally and intentionally discharged a firearm causing great bodily injury or death (§ 12022.53, subds. (b)-(d)). Terrgalstanyan was additionally charged with two counts of possession of an assault weapon (§ 12280, subd. (b)).

The special circumstance allegation was dismissed before trial. In addition, the murder charge against Stepanyan was dismissed, and she pleaded no contest to one count of being an accessory after the fact to murder. Before trial Terrgalstanyan pleaded guilty to the two assault weapon charges.

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[2] Statutory references are to the Penal Code unless otherwise indicated.

3. *The Evidence at Trial*

a. *The People's case*

Simonyan testified at trial, and taped excerpts from his statements to the police were played for the jury. Stepanyan also testified at trial. She had become friends with Voskanyan after Voskanyan helped her attempt to post bail for Artur, who had been charged with a felony in August 2008.[3] Stepanyan and Voskanyan saw each other several times a week after Artur's arrest, and Mangasaryan occasionally drove Stepanyan to Voskanyan's house. After Voskanyan failed to repay the money she owed Stepanyan, the relationship soured. Voskanyan stopped answering Stepanyan's calls sometime in January 2009. Stepanyan complained frequently about Voskanyan in telephone calls to Artur, who was incarcerated in a Santa Ana jail, and Mangasaryan, who was often connected on the calls. On January 30, 2009 Stepanyan learned Voskanyan had committed fraud using one of Stepanyan's bank accounts. Furious, Stepanyan called Voskanyan, and the two women argued. Stepanyan told Artur of the incident and connected Mangasaryan and Voskanyan on the call. After a bitter argument Voskanyan hung up, and Artur assured Stepanyan that Voskanyan would be dealt with and that money was no longer the issue. Like all of Artur's telephone calls, this call was recorded, and excerpts played for the jury. Stepanyan did not see Mangasaryan on the evening of February 24, 2009 but spoke with him multiple times by cell phone and exchanged text messages.

Albert Haghverdian, Mangasaryan's brother-in-law, testified he had gone with Mangasaryan to a friend's apartment on the evening of February 24, 2009. There were four or five people at the apartment drinking vodka and talking. Mangasaryan left the apartment at some point after 11 p.m., but Haghverdian could not say how long he was gone. He and Mangasaryan took a taxi home around 2 a.m. Marine Tokatlyan, who arrived at the apartment around 10 p.m., recognized Mangasaryan as someone she had met at Voskanyan's house. Tokatlyan told Mangasaryan that Voskanyan had told her she

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[3] Although the bail was posted, Artur was not released because of an immigration hold.

owed him money. Mangasaryan responded, "Why did you come here, why do you remember me? . . . I feel sorry for you that you are here. You can't imagine what will happen." Tokatlyan also testified Mangasaryan used his cell phone before he left at 11 p.m. and asked their host for his address during the call. He gave someone named "Ribo" or "Rafo" the street and cross-street before ending the call. He left the apartment about 11:30 p.m. She did not see him return.

The People introduced numerous records for Mangasaryan, Stepanyan and Terrgalstanyan's cell phones, including billing records, call detail records and cell site location information. Edward Dixon, a senior network cell support engineer for AT&T, identified the types of records generated for those cell phones (two of which were iPhones) and described the technology used by AT&T at the time of the murder to provide cellular service and track usage for its customers. Dixon testified AT&T cell sites used two frequencies to ensure maximum range and capacity of coverage. For each cell site, coverage was demarked by sectors identified by separate cell identification numbers. Using a computer program called Atoll, AT&T was able to plot the approximate "footprint" associated with each cell site, which is further defined by individual sectors of coverage within that site.[4] AT&T uses these maps for business purposes, which include the positioning and manipulation of its equipment to maximize efficiency in the switching of calls between cell sectors and to minimize duplicate coverage between adjacent sites, as well as maintenance of the integrity of the system. Dixon opined a customer was highly likely to have made or received a call at a location around a particular cell sector if a call or text message was handled by that sector.

The People also called as witnesses a firearm examiner who testified the Desert Eagle .40 caliber handgun found in the trunk of Terrgalstanyan's car had not fired the bullet that killed Voskanyan and a Burbank police detective who testified

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[4] The Atoll program uses multiple inputs to calculate the footprint of cell sites and sectors, including topology, building size, shape and composition, antenna types and directions, as well as power output, and creates a "predictive output" using "[a]s much of that variable information as you put in . . . ."

Terrgalstanyan's Mercedes CLS did not leave the tire mark found in front of Voskanyan's home.

In closing argument the prosecutor used the AT&T records and the map generated by the Atoll program to show the course traveled by Mangasaryan's and Terrgalstanyan's cell phones on the evening of the murder through the following morning. The prosecutor was able to show that Terrgalstanyan was not at his girlfriend's house as he claimed because she called and texted him repeatedly without receiving an answer until well after the 12:15 a.m. murder. Terrgalstanyan and Mangasaryan, however, phoned each other several times that evening, and both phones were identified in a cell sector near the apartment where Mangasaryan had spent the evening and then in a southwest Burbank cell sector that included Simonyan and Voskanyan's home. A text to Mangasaryan from his wife was recorded in that sector just minutes before Burbank police received a call from Simonyan about the murder.

b. *The defense case*

Neither Mangasaryan nor Terrgalstanyan testified at trial. In Mangasaryan's defense his brother-in-law, who accompanied Mangasaryan to the party, testified he was wearing white athletic shoes and an uncollared shirt—not the dress clothes described by Simonyan. Mangasaryan's wife testified he left the house that evening wearing a white T-shirt, white athletic shoes, denim jeans and a sport coat. Between 11:00 and 11:30 p.m., Stepanyan brought him home to change his shirt because he had spilled a drink. She gave him another white T-shirt. They returned to the party, and she went to bed. She also testified she had never seen him act violently toward anyone.

4. *The Verdicts and Sentencing*

The jury found Mangasaryan guilty of first degree murder. Terrgalstanyan was found guilty of second degree murder. All firearm allegations were found true. Mangasaryan received an indeterminate sentence of 25 years to life on the murder count and an additional 25 years to life on the firearm enhancement. Terrgalstanyan was sentenced to an indeterminate term of life with the possibility of parole on the second degree murder count, plus one year for the firearm enhancement, plus the low term of

16 months on the first assault weapon count and a concurrent sentence on the second assault weapon count.

CONTENTIONS

Both Mangasaryan and Terrgalstanyan contend the trial court erred in admitting the Atoll program cell system map and contest the sufficiency of the evidence at trial. Terrgalstanyan additionally contends the court erred in admitting evidence of the handguns found in the trunk of his car and various cell phone conversations, text messages and statements recorded by police. He also contends the court erred in failing to instruct the jury Stepanyan was an accomplice to the murder, or, in the alternative, his trial counsel provided ineffective assistance at trial by failing to request such an instruction.

DISCUSSION

1. *The Trial Court Did Not Err in Admitting the AT&T Cell Site Evidence*

   a. *Proceedings below*

Before trial Mangasaryan moved to exclude certain of the AT&T records and the coverage maps generated by the Atoll program. The People had proffered the evidence under Evidence Code section 1552, which creates a rebuttable presumption that printed computer-generated records accurately represent "the existence and content" of the source information contained in the computer. Although the records and maps were authenticated by AT&T's expert, Mangasaryan contended the People had failed to establish an adequate foundation for their admission. The expert had not been the one to prepare the reports and could not identify the parameters that led to their creation. Relying on the business records exception to the hearsay rule set forth in Evidence Code section 1271, Mangasaryan argued the individuals who created these parameters and who caused the document to be prepared were required to testify in court subject to cross-examination. Terrgalstanyan also objected to admission of the records and maps under Evidence Code section 352.

The trial court rejected the defense objections and admitted the records and maps pursuant to Evidence Code section 1552.

b. *The records and maps are not hearsay and thus not subject to the limitations of Evidence Code section 1271*

Enacted to reconcile the historical best evidence rule with modern technology (see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 177 (1997-1998 Reg. Sess.) as amended May 5, 1998), Evidence Code section 1552, subdivision (a),[5] establishes a presumption that printed representations of information stored in a computer are accurate representations of the computer information they purport to represent. (See *People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1450 (*Hawkins*).) "This presumption operates to establish only that a computer's print function has worked properly. The presumption does not operate to establish the accuracy or reliability of the printed information. On that threshold issue, upon objection the proponent of the evidence must offer foundational evidence that the computer was operating properly." (*Ibid.*)[6]

The AT&T expert testified he had reviewed logs for the relevant time period and had not seen any trouble reports, which would have been generated if the system had not been functioning properly. We agree with the People that testimony was sufficient foundation to admit the records under Evidence Code section 1552. The issue raised here

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[5] Evidence Code section 1552, subdivision (a), provides: "A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent."

Evidence Code section 1553 establishes a similar presumption for images stored on a video or other digital medium.

[6] No doubt because of our pervasive reliance on the digitization of information, "courts have refused to require, as a prerequisite to admission of computer records, testimony on the 'acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software.'" (*People v. Martinez* (2000) 22 Cal.4th 106, 132.) When errors and mistakes occur, they could be developed on cross-examination and should not affect the admissibility of the computer record itself. (*Ibid.*)

by defendants, however, is whether the call detail records and coverage maps should be treated as hearsay[7] and thus inadmissible unless accompanied by the foundational showing required by the business records exception set forth in Evidence Code section 1271. That section provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: (a) The writing was made in the regular course of a business; (b) The writing was made at or near the time of the act, condition, or event; (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

It is true, as Mangasaryan and Terrgalstanyan assert, that California courts have frequently required compliance with Evidence Code section 1271 when grappling with the admissibility of computer records. (See, e.g., *People v. Lugashi* (1988) 205 Cal.App.3d 632, 641-642 [business records]; *People v. Martinez* (2000) 22 Cal.4th 106, 126-134 [official records]; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769 ["if computer printouts are 'offered for the truth, . . . they must qualify under some hearsay exception, such as business records under Evidence Code section[] 1271"].) Courts addressing these issues more recently, however, have recognized that not all information stored on or generated by a computer constitutes hearsay. As one court explained, "a computer can be used to store documents and information entered by human operators[; but] [a] computer can also be programmed to generate information on its own, such as a record of its internal operations. . . . [T]he latter type of computer-generated information is not hearsay because it is not a statement by a person." (*Hawkins, supra,* 98 Cal.App.4th at p. 1449; accord, *People v. Nazary*

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[7] "'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) "The hearsay rule" states: "Except as provided by law, hearsay evidence is inadmissible." (*Id.*, subds. (b), (c).) "'Statement' means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression." (Evid. Code, § 225.)

(2010) 191 Cal.App.4th 727, 754.) "[T]he true test for admissibility of a printout reflecting a computer's internal operations is not whether the printout was made in the regular course of business, but whether the computer was operating properly at the time of the printout." (*Hawkins*, at pp. 1449-1450; accord, *Nazery*, at pp. 754-755 [test of admissibility of machine-generated receipts from automated gas station island pumps is whether "machine was operating properly at the time of the reading"].)[8]

The trial court correctly concluded the cell sector coverage maps at issue here did not constitute hearsay and, thus, were not subject to Evidence Code section 1271. In particular, the field data input by AT&T engineers were not "statements" for purposes of the hearsay rule. Instead, according to the testimony of AT&T's expert, field engineers were gathering readings in the field to improve the accuracy of the Atoll program. Defendants failed to show the data constituted "oral or written verbal expression" of a person "offered to prove the truth of the matter stated." (See Evid. Code, §§ 225, 1200, subd. (a).)

c. *The trial court did not abuse its discretion in admitting the records over Mangasaryan's Evidence Code section 352 objection*

Evidence Code section 352 allows a court "in its discretion" to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." Mangasaryan contends the testimony of the AT&T expert and the maps indicating the predicted coverage of relevant cell sectors were speculative, too confusing for the jury and insufficiently probative to warrant their admission.

This argument is wholly without merit. Cell phones are now ubiquitous, and most users undoubtedly understand the basic fact that cell phone reception varies depending upon accessibility to coverage from a cell site. Expert testimony was necessary to

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[8] The Supreme Court has granted review in two cases addressing the admissibility of computer-generated red-light camera photographs, video and data. (See *People v. Goldsmith* (2012) 203 Cal.App.4th 1515, review granted May 9, 2012, S201443; *People v. Borzakian* (2012) 203 Cal.App.4th 525, review granted, May 9, 2012, S201474.)

explain how AT&T's technology operated, but it is highly unlikely any juror was unduly confused by the significance of the coverage maps generated by AT&T's Atoll program. Further, defendants were able to impeach AT&T's expert by eliciting his admissions that the maps were predictive rather than conclusive and that a particular call might not register with the closest sector. Nonetheless, the pattern shown by the recorded calls and messages was highly probative and not particularly confusing. The trial court properly admitted the evidence and allowed the defendants ample opportunity to impeach the factual and technological basis for the maps. There was no abuse of discretion. (See *People v. Rodriguez* (1990) 20 Cal.4th 1, 9-10 [trial court's Evide Code, § 352 ruling "will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice"].)

2. *The Out-of-Court Statements Were Properly Admitted*

Terrgalstanyan objects to the admission of recorded cell phone conversations and text messages between Stepanyan and the Mangasaryan brothers, as well as a statement he made during his initial interview with Officer Karagiosian.

Most of the conversations Terrgalstanyan contests were those in which Mangasaryan, his incarcerated brother, Artur, and Stepanyan discussed the money owed by Voskanyan, their attempts to recover the debt and the impact of Voskanyan's failure to pay on their own debts. Terrgalstanyan was a party to only one of these conversations. In admitting these recordings, the trial court ruled most of the statements were not hearsay because they were offered for state of mind and potential motive, rather than the truth of the contents. Although we disagree somewhat with the trial court's rationale for overruling the objections, it was not an abuse of discretion to admit the recordings into evidence. Evidence Code section 1250, subdivision (a), permits hearsay evidence of a declarant's state of mind when "the declarant's state of mind . . . is itself an issue in the action" or when it is "offered to prove or explain acts or conduct of the declarant." (See *People v. San Nicolas* (2004) 34 Cal.4th 614, 668 ["'[e]vidence tending to establish prior quarrels between a defendant and decedent and the making of threats by the former is

properly admitted . . . to show the motive and state of mind of the defendant'"].) Several of the statements were also admissible under Evidence Code section 1220, which creates an exception to the hearsay rule for statements of a party. (See *People v. Hornung* (2004) 34 Cal.4th 871, 898, fn. 5 ["Evidence Code section 1220 covers all statements of a party, whether or not they might otherwise be characterized as admissions"]; see also Evid. Code, § 1230 [hearsay exception for statements against interest].)

Terrgalstanyan also complains these statements should have been excluded under Evidence Code section 352 because they implicated Mangasaryan only, had no probative value against him and were highly prejudicial. To the extent this is true, however, the Supreme Court "ha[s] never held that the absence of cross-admissibility, by itself, sufficed to demonstrate prejudice." (*People v. Memro* (1995) 11 Cal.4th 786, 850.) Terrgalstanyan points to no actions he took to minimize the purported prejudice to him: He does not argue his trial should have been severed from Mangasaryan's, and he fails to identify any request by his counsel for a limiting instruction on this point. (See *People v. Macias* (1997) 16 Cal.4th 739, 746 [absent request by defendant, trial court has no duty to give limiting instruction].) A limiting instruction was given by the court concerning other evidence, but Terrgalstanyan has not complained the court improperly denied such an instruction on this point. The court did, as required, instruct pursuant to CALCRIM No. 203, which directs jurors in cases involving multiple defendants to "separately consider the evidence as it applies to each defendant."

Terrgalstanyan also challenges as unduly prejudicial Officer Karagiosian's testimony Terrgalstanyan had stated, "I am easily going for 45." Terrgalstanyan contends the statement was unduly prejudicial, arguing the statement was ambiguous and did not necessarily mean he believed he would be sentenced to 45 years. At trial, however, Terrgalstanyan failed to object to the statement on those grounds. His argument on appeal is therefore forfeited. (See *People v. Tate* (2010) 49 Cal.4th 635, 692; accord, *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 81-82 [failure to object to testimony in trial court on grounds asserted on appeal results in forfeiture of argument on appeal].)

3. *Evidence of the Handguns Found in the Trunk of the Mercedes Was Properly Admitted*

Terrgalstanyan asserts the trial court abused its discretion under Evidence Code section 352 in permitting testimony that multiple handguns, including a Desert Eagle .40 caliber handgun containing bullets matching the one that killed Voskanyan, had been found in the trunk of his car the day after the murder. According to Terrgalstanyan, numerous courts have rejected prosecutorial attempts to introduce evidence of weapons that were not used in the underlying crime. (See, e.g., *People v. Henderson* (1976) 58 Cal.App.3d 349, 360 ["[e]vidence of possession of a weapon not used in the crime charged . . . leads logically only to an inference that defendant is the kind of person who surrounds himself with deadly weapons—a fact of no relevant consequence to determination of [his] guilt or innocence"]; *People v. Riser* (1956) 47 Cal.2d 566, 577 ["[w]hen the prosecution relies . . . on a specific type of weapon, it is error to admit evidence that other weapons were found in his possession, for such evidence tends to show, not that he committed the crime, but only that he is the sort of person who carries deadly weapons"], overruled on other grounds in *People v. Morse* (1964) 60 Cal.2d 631, 652, fns. 5 & 17.)

However, the Supreme Court has also held that "when weapons are otherwise relevant to the crime's commission, but are not the actual murder weapon, they may still be admissible." (*People v. Cox* (2003) 30 Cal.4th 916, 956 [trial court properly admitted evidence three guns had been found in defendant's truck even though cause of death was unknown; prosecutor allowed to show defendant had "instruments that would allow him to overpower and cause the death of these young girls"], disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; see *People v. Neely* (1993) 6 Cal.4th 877, 896 [evidence of rifle located in defendant's truck properly admitted even though it was not the murder weapon; rifle was "not irrelevant" to the charged offenses]; *People v. Lane* (1961) 56 Cal.2d 773, 785 [admission of guns found in abandoned truck not relevant to the homicide "per se" but as weapons "of a character which could be used in armed robbery . . . in furtherance of the criminal plan"]; *People v. Carpenter* (1999)

21 Cal.4th 1016, 1053 [witness's testimony defendant told her he kept a gun in his van was relevant and admissible as circumstantial evidence he committed the offenses].)

In this case, two assault weapons and four handguns were found in the trunk of Terrgalstanyan's car. Before trial, he pleaded guilty to two counts of possession of an assault weapon. In justifying the admissibility of the four handguns at an Evidence Code section 402 pretrial hearing, the prosecutor advised the court none of the handguns was the murder weapon but the weapons were nonetheless relevant for multiple reasons: Terrgalstanyan had been trying to dispose of incriminating evidence the day after the murder;[9] two of the rounds found in the Desert Eagle .40 caliber gun were identical to the bullet that killed Voskanyan and Terrgalstanyan's fingerprints were on the magazine removed from the gun; and, when informed one of the guns matched the murder weapon, Terrgalstanyan had replied "The Desert Eagle?" The court recognized Terrgalstanyan's statement would be relevant only if guns of different caliber had been found in the trunk. Based on the prosecutor's showing, the court ruled the People would be allowed to elicit testimony about the four handguns but not the assault weapons.[10]

This ruling was well within the discretion of the court. The relevance of the Desert Eagle .40 caliber handgun and its contents is not subject to dispute; and Terrgalstanyan's responsive comment, admissible under any circumstances, is significantly more probative in light of the existence of non-.40 caliber weapons. Was the evidence prejudicial? Undoubtedly. However, "[t]he prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case.

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[9] Terrgalstanyan told officers he was disposing of the guns because his parents had objected to having them in their house.

[10] The court also gave a limiting instruction as to the permissible use of this testimony: "This evidence was admitted only for the purpose of giving context to statement subsequently made by Defendant Arpiar Terrgalstanyan when interviewed by police."

The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.'" (*People v. Karis* (1988) 46 Cal.3d 612, 638.)

4. *The Trial Court Properly Instructed the Jury on Accomplice Testimony*

Terrgalstanyan contends the trial court failed to instruct the jury with CALCRIM No. 335 directing that Stepanyan's testimony must be viewed with caution because she was an accomplice to the murder.[11] Because the evidence Stepanyan was an accomplice was disputed, the trial court instructed pursuant to CALCRIM No. 334,[12] which requires

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[11] CALCRIM No. 335 provides: "If the crime of [murder] was committed, then [Stepanyan] was an accomplice to that crime. You may not convict the defendant of [murder] based on the testimony of an accomplice alone. You may use the testimony of an accomplice to convict the defendant only if: 1. The accomplice's testimony is supported by other evidence that you believe; 2. That supporting evidence is independent of the accomplice's testimony; AND 3. That supporting evidence tends to connect the defendant to the commission of the crimes. Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime, and it does not need to support every fact mentioned by the accomplice in the statement or about which the witness testified. On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime. The evidence needed to support the testimony of one accomplice cannot be provided by the statement or testimony of another accomplice. Any testimony of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that testimony the weight you think it deserves after examining it with care and caution and in the light of all the other evidence."

[12] CALCRIM No. 334 is substantially the same as CALCRIM No. 335, but, as given in this case, contains the following language preceding the corroboration requirement: "Before you may consider the statements and testimony of Bella Stepanyan as evidence against the defendants Armen Mangasaryan and Arpiar Terrgalstanyan, you must decide whether Bella Stepanyan was an accomplice to the crime of murder. A person is an accomplice if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if: [¶] 1. He or she knew of the criminal purpose of the person who committed the crime; AND [¶] 2. He or she intended to, and did in fact, aid, facilitate, promote, encourage, or instigate the commission of the crime or participate in a criminal

the jury to decide whether a particular witness is an accomplice such that their testimony must be corroborated. The trial court did not err in failing to instruct under CALCRIM No. 335.

Section 1111 prohibits conviction on the testimony of an accomplice—defined by the statute as "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given"—unless the testimony is "corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense." The reason for the corroboration requirement is apparent: An accomplice is likely to implicate the defendant in order to shift the blame and minimize his or her own culpability. (*People v. Tobias* (2001) 25 Cal.4th 327, 331; *People v. Hayes* (1999) 21 Cal.4th 1211, 1271.)

To be "chargeable with an identical offense" and thus considered an accomplice within the meaning of section 1111, a witness must be found to be a principal under section 31. (See *People v. Lewis* (2001) 26 Cal.4th 334, 368; *People v. Williams* (2008) 43 Cal.4th 584, 636; see also § 31 [defining principal as "[a]ll persons concerned in the commission of a crime . . . whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission"].) If the evidence establishes as a matter of law the witness was an accomplice, the court must so inform the jury under CALCRIM No. 335 and instruct it on the corroboration requirement. (*Lewis*, at p. 369 [directing courts to instruct with

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conspiracy to commit the crime. [¶] The burden is on the defendant to prove that it is more likely than not that Bella Stepanyan was an accomplice. [¶] An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is present at the scene of a crime, even if he or she knows that a crime will be committed or is being committed and does nothing to stop it. [¶] A person may be an accomplice even if he or she is not actually prosecuted for the crime. [¶] If you decide that Bella Stepanyan was not an accomplice, then supporting evidence is not required and you should evaluate his or her statement or testimony as you would that of any other witness. [¶] If you decide that Bella Stepanyan was an accomplice, then you may not convict the defendants of murder based on her statements and testimony alone. . . ."

comparable CALJIC accomplice instructions when "'"facts with respect to the participation of a witness in the crime for which the accused is on trial are clear and not disputed, it is for the court to determine whether he is an accomplice"'"]; accord, *People v. Hayes, supra,* 21 Cal.4th at p. 1271.) Likewise, if there is sufficient evidence from which a reasonable juror could find the witness to be an accomplice, the trial court must instruct the jury under CALCRIM No. 334 that, if it finds by a preponderance of the evidence a witness is an accomplice in accordance with the legal definition, the witness's testimony implicating the defendant must be independently corroborated before it may be considered. (See *Lewis,* at p. 369; *People v. Zapien* (1993) 4 Cal.4th 929, 982.) In either situation the jury must also be instructed the testimony of an accomplice witness is to be viewed with distrust. (*Zapien,* at p. 982.) "Whether a person is an accomplice is a question of fact for the jury unless there is no dispute as to either the facts or the inferences to be drawn therefrom." (*People v. Fauber* (1992) 2 Cal.4th 792, 834.) "If sufficient evidence is presented at trial to justify the conclusion that a witness is an accomplice, the trial court must so instruct the jury, even in the absence of a request." (*People v. Brown* (2003) 31 Cal.4th 518, 555.)

Stepanyan was originally charged in the information with murder and investigated as a principal based on the money she was owed by Voskanyan, the deterioration of their relationship and Stepanyan's own involvement with the Mangasaryan brothers. However, before trial the People withdrew the murder charge, and Stepanyon pleaded guilty to the lesser charge of being an accessory after the fact.[13] Although the abandonment of the murder charge is not dispositive as to whether an instruction under CALCRIM No. 335 should have been given, the evidence presented at trial did not support the theory Stepanyan had been a principal in the murder. In the face of her

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[13] Section 32 defines an accessory as "[e]very person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof . . . ."

complaints about Voskanyan, the Mangasaryan brothers repeatedly told Stepanyan to leave the problem of dealing with Voskanyan to them. Several of those conversations were recorded and played for the jury. There was no evidence Stepanyan understood those statements to mean they intended to kill Voskanyan.

Thus, whether Stepanyan was an accomplice was an issue properly resolved by the jury, and the court correctly instructed pursuant to CALCRIM No. 334. We presume the jury understood and followed the instruction given. (See *People v. Yeoman* (2003) 31 Cal.4th 93, 139.) Accordingly, if the jury concluded Stepanyan was an accomplice, it had been properly instructed to view her testimony with distrust.

Although we find no error here, any possible error was harmless: A trial court's failure to instruct on accomplice liability is harmless if there is adequate corroborating evidence in the record to support the alleged accomplice's testimony. (*People v. Williams, supra,* 43 Cal.4th at p. 638; *People v. Lewis, supra,* 26 Cal.4th at p. 370; *People v. Fauber*, *supra*, 2 Cal.4th at p. 834.) "'Corroborating evidence may be slight, may be entirely circumstantial, and need not be sufficient to establish every element of the charged offense. [Citations.]' [Citation.] The evidence 'is sufficient if it tends to connect the defendant with the crime in such a way as to satisfy the jury that the accomplice is telling the truth.'" (*Lewis,* at p. 370; accord, *People v. Brown*, *supra*, 31 Cal.4th at p. 556.)

Oddly enough, Terrgalstanyan does not identify how Stepanyan's testimony harmed him such that her testimony required corroboration. Her testimony regarding Voskanyan's debt was amply corroborated by the recorded conversations played for the jury. Similarly, cell phone records supported her testimony she had not been with Mangasaryan on the night of the murder. The single piece of testimony she gave concerning money owed by Mangasaryan to Terrgalstanyan's father was corroborated by a text message. Under these circumstances, any error by the court in failing to instruct under CALCRIM No. 335 was harmless. (See *People v. Mower* (2002) 28 Cal.4th 457, 484 [if trial court's instructional error violates California law, appellate court applies harmless error standard stated in *People v. Watson* (1956) 46 Cal.2d 818, 836]; *People v.*

Frye (1998) 18 Cal.4th 894, 968-969, overruled on other grounds in *People v. Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22 [instructions on the corroboration requirement in § 1111 do not define an element of the charged offense and thus do not involve the federal Constitution].) [14]

5. *The Verdicts Are Supported by Substantial Evidence*

To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Having reviewed the record on appeal, we see no basis for reversal on the ground of insufficient evidence. The evidence established the existence of a serious conflict

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[14] At oral argument Terrgalstanyan suggested for the first time that the inclusion of the names of both defendants in CALCRIM No. 334 improperly permitted jurors to conclude that corroboration of Stepanyan's testimony against Mangasaryan was sufficient to corroborate all parts of her testimony, including portions lacking independent corroboration that may have been used to convict Terrgalstanyan. We need not decide whether this objection to the wording of CALCRIM No. 334 was forfeited as untimely or constitutes error because, as explained above, any error was harmless.

between the victim and the defendants, who belonged to the same insular community and who had visited her on several occasions in attempts to collect the debt she owed, driving the same car Simonyan identified on the night of the murder. While it was dark and his glimpse of the shooter and the vehicle was fleeting, Simonyan had known the Mangasaryan brothers for several years. He also recognized the distinctive car as one owned by Terrgalstanyan's father. Terrgalstanyan's incriminating statements following his arrest, coupled with the discovery in the Mercedes of the identical .40 caliber bullets used in the murder, provided significant corroboration to Simonyan's testimony.

The jury was entitled to believe all of this testimony, in addition to the highly incriminating evidence the defendants' cell phones had been in close proximity to Voskanyan's home at the time she was murdered. That same evidence showed defendants lied to the police about their actions when arrested just hours after the murder.

In short, there was adequate evidence to support the jury's verdicts.

DISPOSITION

The judgments are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.